

City of Detroit

CITY COUNCIL

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ANNE MARIE LANGAN
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TO: Krystal A. Crittendon, Corporation Counsel
Law Department

FROM: Irvin Corley, Jr., Fiscal Analysis Director

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DATE: April 26, 2011

RE: 2011-2012 Budget Analysis

Attached is our analysis regarding your department's budget for the upcoming 2011-2012 Fiscal Year.

Please be prepared to respond to the issues/questions raised in our analysis during your scheduled hearing on **Monday, May 2, 2011 at 2:00 pm**. We would then appreciate a written response to the issues/questions at your earliest convenience subsequent to your budget hearing. Please forward a copy of your responses to the Councilmembers and the City Clerk's Office.

Please contact us if you have any questions regarding our budget analysis.

Thank you for your cooperation in this matter.

IC:ss

Attachment

cc: Councilmembers
Council Divisions
Auditor General's Office
Thomas Lijana, Finance Director
Floyd Stanley, Budget Deputy Director
Alia Moss, General Manager - Budget
Denise Gardener, Mayor's Office

Law Department (32)

FY 2011-12 Budget Analysis by the Fiscal Analysis Division

Summary

The Law Department is a general fund agency. The recommended 2011-12 Mayor's Recommended Budget totals \$20.3 million, an increase of \$1.1 million or a 5.25% increase from the current fiscal year. The departmental revenues are remaining the same as current year at \$1.6 million. The department's net tax cost is \$18.7 million, which is an increase of \$1.1 million or 5.73% increase.

2010-11 Surplus/(Deficit)

The Administration anticipates that the Law Department will end the current fiscal year with a surplus of \$1.5 million. The department surplus is all on the appropriation side and the result of vacancies according to the Administration.

Overtime

The department has an overtime budget of \$26,791 in the current fiscal year. As of March 31, 2011, the department spent \$8,299 in overtime, 30.9% of the budget. The recommended overtime budget for 2011-12 remains unchanged at \$26,791.

Personnel and Turnover Savings

The Mayor recommends deleting a net of 7 positions. On March 31, 2011 there were 8 vacant positions in the Law Department.

The Mayor is not recommending any turnover savings for the Law Department for fiscal year 2011-12.

Following is information by appropriation comparing current FY 2009-10 positions, as of March 31, 2010 filled positions and FY 2009-10 recommended positions.

| <u>Appropriation/Program</u> | <u>Redbook Positions FY 2010-11</u> | <u>Filled Positions 3/31/2011</u> | <u>Mayor's Budget Positions FY 2011-12</u> | <u>Over/(Under) Actual to 10/11 Budget</u> | <u>Mayor's Recommended Turnover</u> |
|--|---|---|--|--|---|
| Law Department (32): | | | | | |
| 00527 Administration & Operations | 119 | 112 | 112 | (7) | \$ - |
| 32XXXX Leave of Absence | | 0 | | 0 | \$ - |
| 32XXXX Worker's Comp | | (1) | | 0 | \$ - |
| 32XXXX Unmatched Positions | | 0 | | 0 | \$ - |
| TOTAL | <u>119</u> | <u>111</u> | <u>112</u> | <u>(8)</u> | <u>\$ -</u> |

Position Changes by Cost Center

| <u>Appropriation/Cost Center</u> | <u>Title</u> | <u>Add / (Delete)</u> | <u>Total</u> |
|-------------------------------------|---|---------------------------|--------------|
| 00527 Administration and Operations | | | |
| 320010 Administration | | | |
| | Administrative Assistant Grade II - Law | (1) | |
| | Senior Assistant Corporation Counsel | (2) | |
| | Senior Assistant Corporation Counsel - Exempted | 1 | |
| | Assistant Corporation Counsel | (1) | |
| | Legal Investigator | (1) | |
| | Senior Legal Secretary | (2) | |
| | Legal Secretary | (1) | |
| | Total | | (7) |

Professional and Contractual Services

Law (32)

| <u>Budgeted Professional and Contractual Services by Activity</u> | <u>FY 2010-11 Budget</u> | <u>FY 2011-12 Recommended</u> | <u>Increase (Decrease)</u> |
|---|------------------------------|-----------------------------------|--------------------------------|
| Administration | \$ 1,807,078 | \$ 1,646,774 | \$ (160,304) |
| Legislative Liaison | 692,000 | 622,800 | (69,200) |
| Total | <u>\$ 2,499,078</u> | <u>\$ 2,269,574</u> | <u>\$ (229,504)</u> |

Significant Funding by Appropriation

| <u>Appro.</u> | <u>Program</u> | |
|---------------|-----------------------------|---|
| 00527 | Administration & Operations | <p>The program decreases by a net \$1.1 million primarily for the following reasons:</p> <ul style="list-style-type: none"> • Salaries decrease by \$79,051. The decrease includes the elimination of seven positions. • Employee benefits and pensions increase by \$1.3 million. • Contractual Services decrease by \$160,304. • Operating Supplies increases by \$213,641. • Operating Services decreases by \$137,783. |

- Capital Equipment and Other Expenses decrease by \$20,100.

00255 Legislative Liaison • Contractual Services decrease by \$69,200.

Issues and Questions

1. The Transition Management Office (TMO) has a number of initiatives to implement throughout the city. Are there any TMO initiatives being implemented In Law Department in the current year? Are there any TMO initiatives included in the 2011-12 Mayor's Recommended Budget for the Law Department? If there are, please list each initiative with a short description, and include the start date, end date, projected savings, and the method of benchmarking savings upon completion of the initiative.
2. A recent article in Governing magazine reported on a major change the city of Chicago implemented for handling police misconduct cases, the article is attached. Could a similar approach be tested in Detroit, selecting 25%, 33%, or 50% of the police misconduct cases on a random basis to be handled in a fashion similar to the Chicago approach?
3. The department request included \$3.6 million in revenue, an increase of \$2.0 million from the current year. The 2011-12 Mayor's Recommended Budget maintains revenues at the current level. Explain the increase in revenues the department proposed and why the Administration did not agree with the department's proposals. Explain the \$1.0 million in new revenue proposed by the department for Court Fines.
4. Last year the Law Department was looking to increase the number of attorneys assigned to 36th District Court in an effort to reduce the number of cases dismissed that results in lost revenue to the City. Has an increase in number of attorneys assigned to 36th District Court taken place? What is the current position of the Law Department on this concept and the ability to increase revenue?
5. Is the new Legal Edge Matter Management System operational? If not, when will the document management system, electronic filing of pleadings and documents, and digitization of documents project be completed?
6. What notification, if any, do operating city departments receive when settlements, claims or judgments are made that resulted from the activities of the department? Does the notification include any suggested corrective actions that could minimize future claims of a similar nature? Is the current process adequate? Or could the overall risk management of the city be improved with better communication and feedback to departments?

Chicago's Police Misconduct Cases Go to Court

To cut costs and save face, all of Chicago's police misconduct cases are going to trial instead of settling out of court.

Heather Kerrigan | February 2011

In 2009, Chicago's court system was hopelessly clogged by cases alleging police misconduct. For years, the city's Department of Law had watched as the number of misconduct allegations crept upward. With the increasing strain on municipal resources, Chicago's attorneys were forced to settle many cases out of court, which reflected poorly on the city's bottom line and police force.

But Chicago found a somewhat counterintuitive way to save money and save face -- by taking every single police misconduct case to court.

In July 2009, Chicago Superintendent of Police Jody Weis wrote to James F. Holderman, chief judge of the U.S. District Court for the Northern District of Illinois, to notify him that the city would be changing its strategy for dealing with lawsuits filed against police officers. Rather than settling these cases out of court, the city would take them to trial.

"I have asked the Department of Law to litigate those cases which would have been settled [as] a matter of financial concern," Weis wrote. "If plaintiffs know their complaint will in fact be litigated, more focus and concern will be given to the factual validity of the complaints signed."

In other words, if plaintiffs knew they'd have to go before a jury, they'd be less likely to file frivolous misconduct cases. Plaintiff attorneys knew the city's reputation for settling out of court, and the Police Department thought the lawyers had come to view misconduct cases as easy wins.

After reviewing the city's settlement strategy, the Law Department came to the same conclusion that the police had. But there was a problem: Taking every case to court would require resources well beyond what the city could afford. Given the available staff, there simply was no practical, in-house way to try every case brought against an officer.

So the city turned to private-sector firms to find defense attorneys. The move wound up saving money. Thanks to the recession, the firms weren't picky with how they got paid. Rather than paying the lawyers an hourly rate, the city developed a bulk-case program. Any eligible law firm chosen by the city would receive a flat fee per case, plus a bonus if the city won the case. Firms hired by Chicago were required to build up each case and take it to trial -- they were prohibited from settling cases out of court. "By paying them that flat fee, that actually made this much more cost-effective for us," says Jennifer Hoyle, public affairs director for the Law Department.

The standing contract, which currently involves 14 different law firms, pays the firms \$35,000 per case in monthly installments over two years, plus a \$15,000 bonus for each win. Not every case goes to outside attorneys. The private firms mostly handle small-exposure cases -- those seeking damages of less than \$100,000 -- which the city considers defensible.

The move is working better than anyone had anticipated. In the first year after the city began taking every case to court, the number of federal civil rights cases filed against police officers dropped by almost 50 percent. In addition, cases brought against officers are being voluntarily dismissed at higher rates. In 2009, about 18 percent of plaintiffs voluntarily dropped their case. By October 2010, nearly 46 percent of plaintiffs dropped their case. The Department of Law told the city that the results are "nothing short of astonishing."

Even when the city takes a case to trial, it's still paying less money than it had when it settled out of court. In 2010, the city was projected to pay approximately \$1.7 million in case settlements. In 2008, it was \$9

million. Farming out every single case to private counsel would still cost only about \$5 million per year in flat fees and bonuses, so the city comes out ahead. The Law Department attributes the overall savings to the decreased number of lawsuits filed -- and it expects that downward trend to continue. If the number of cases continues to fall, so will the legal expenses.

The savings presented by the city have in some cases drawn criticism from plaintiffs' lawyers. The lawyers argue that they would have been willing to settle out of court for less than what was awarded to a plaintiff at trial. Add to this attorneys' fees and trial costs, and some have argued that the city loses money. However, the declining number of cases still leads to overall savings for Chicago.

The feedback from those most closely affected -- law enforcement officers -- has also been positive. They had long advocated for small federal civil rights cases to go to trial, in some instances arguing that settling the cases reflected poorly on individual officers' performance, especially if a trial would have proven that the officer had acted appropriately. As Weis stated in his 2009 letter to Holderman, officers had raised "concerns that their reputation is being tarnished, they are not allowed to clear their names, and, that criminal defendants are using civil litigation to either assist their criminal defense or to intimidate the officers from conducting lawful enforcement activity." Thanks to the new strategy, that mentality is changing.

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